CHAPTER 3

3.0 AUTHORIZATION PROCESS FOR DREDGING AND DREDGED MATERIAL DISPOSAL PROJECTS

3.1 INTRODUCTION

A number of state and federal agencies regulate dredging and dredged material disposal in the Bay Area. Different laws and regulations govern their roles and responsibilities, but often their purposes and goals overlap (Table 3.1). The primary state and federal agencies involved in permitting such projects are the San Francisco Bay Conservation and Development Commission (BCDC), State Lands Commission (SLC), San Francisco Bay Regional Water Quality Control Board (SFBRWQCB), U.S. Army Corps of Engineers (USACE), and U.S. Environmental Protection Agency (USEPA). These agencies have established the Dredged Material Management Office (DMMO) to coordinate regulatory processes for dredging and disposal projects, thus providing better service to the public while ensuring environmental protection.

This chapter describes the role and general operating procedures of the DMMO and the DMMO review process for dredging and dredged material disposal projects. This chapter also describes the individual DMMO agencies' permitting processes. Other agencies may also be involved in the authorization of dredging and disposal projects, either by issuing additional approvals or by providing comments to permitting agencies. These other agencies, their roles, and environmental review, pursuant to the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), of dredging and disposal projects during the authorization process also are described in this chapter.

3.2 IMPLEMENTATION MEASURES

The implementation measures related to the review and authorization of dredging, dredged material disposal, and beneficial reuse projects are listed below.

3.2.1 Consistency in Environmental Review of Projects

- The LTMS agencies will prepare a guidance document on environmental impacts of dredging, dredged material disposal, and beneficial reuse projects on the relevant regulatory processes for such projects. The document will be used by LTMS agencies during CEQA and NEPA review, and will be distributed to other agencies that may serve as the lead agencies for such projects.

Table 3.1
Basis for Regulatory Authority and Mandates of Primary State and Federal Agencies with Jurisdiction over Dredging and Dredged Material Disposal Projects in the San Francisco Bay Region

USACE	*USEPA*	*BCDC*	*RWQCB*	*SLC*
Basis for Regulatory Authority				
CWA[1] MPRSA[2] Rivers & Harbors Act of 1899	CWA MPRSA	McAteer-Petris Act Suisun Marsh Protection Act Coastal Zone Management Act	Porter-Cologne Water Quality Control Act CWA	Ownership of State Lands
Mandate includes				
Regulate placement of dredged or fill material into waters of the U.S. Regulate transportation of dredged material for the purpose of ocean disposal Protect and maintain navigable capacity of nation's waters	Maintain integrity of nation's waters Oversee disposal of materials, including dredged material, into ocean waters	Reduce Bay fill Protect and manage coastal zone resources	Protect the beneficial uses of waters of the state	Manage state's sovereign lands for purposes consistent with the public trust

3.2.2 Involvement of Agencies and Interested Parties During Planning Phases of Projects

· The LTMS agencies will encourage project proponents to involve the agencies and interested parties early in the planning phases of projects by encouraging project proponents to form work groups, where appropriate, and by encouraging early coordination with the Dredged Material Management Office.

3.2.3 Restrictions on Dredging and Disposal Projects ***(consistent with California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) Biological Opinions on the LTMS EIS/EIR)***

· Dredging and dredged material disposal activities will be restricted as indicated in Figures 3.2 and 3.3 (and in Appendix F). Any projects proposing deviation from these restrictions will be approved by the permitting agencies only after completion of required

1 CWA – Clean Water Act (33 U.S.C. 151, et seq.)

2 MPRSA – Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401-1445)

consultation under Section 7 of the Endangered Species Act by the appropriate federal action agency. The permitting agencies will closely review disposal projects proposed for the designated in-Bay disposal sites to ensure that disposal during the specified time frames is avoided or minimized. The permitting agencies will require that the need for disposal at the in-Bay sites during the specified time frames is clearly established.

3.2.4 Determining Disposal Location before Performing Sediment Testing

- To minimize the possibility of more than one sampling and testing event to test sediments for more than one disposal environment, the Dredged Materials Management Office will encourage project proponents to submit an alternatives analysis pursuant to the Clean Water Act and a statement of consistency with BCDC's policies regarding fill in the Bay before proposing and implementing any sediment testing.

3.2.5 Standard Permit Conditions

- The LTMS agencies, in issuing permits for dredging and disposal projects, will coordinate permit conditions and may use permit condition language in Appendix G, where appropriate. Each agency may include other permit conditions, in addition to those listed.

3.3 DMMO ROLE AND OPERATING PROCEDURES

3.3.1 DMMO Role

The DMMO provides coordinated review of dredging and dredged material disposal projects and consistency in recommendations to decision-makers regarding these projects. The permitting system for such projects can be lengthy and complex, because several federal and state agencies issue permits or other approvals. Furthermore, other state and federal agencies consider and comment on these permit actions. The number and types of permits and approvals required for dredging and disposal projects vary depending on the location and ownership of the dredging and disposal sites, the volume of material, and whether the project requires new permits or is considered an episode under an existing multi-episode permit. Coordination of the primary responsible agencies through the DMMO decreases redundancy and unnecessary delays in the permitting process, ensures environmental protection, and provides a single point-of-entry into the permitting process, for project proponents and interested parties. The coordinated exchange of technical information by the DMMO also ensures that regulatory actions are taken in an informed and consistent manner.

DMMO Responsibilities

- Serve as a single point-of-contact for permitting
- Make recommendations on the adequacy of Sampling and Analysis Plans (SAPs) and Tier I requests
- Make recommendations on the suitability of dredged material for proposed disposal environments.

The DMMO reviews all Bay Area navigational dredging and dredged material disposal projects, including congressionally authorized civil works projects carried out by the USACE. The DMMO does not issue permits; rather, it makes consensus-based recommendations to the member agencies on completeness of permit applications, adequacy of sediment sampling and analysis plans, and suitability of sediments for proposed disposal environments.

The member agencies also recommend permit conditions, as appropriate, to be included in individual member agency permits. The individual agencies have agreed to support the consensus recommendations of the group, subject to final approval by each of the individual member agencies through their normal regulatory processes.

The USACE serves as the "host" agency for the DMMO and provides logistical support for meetings by providing meeting rooms, preparing agendas and meeting minutes, and distributing information among participants, applicants, and interested parties. The USACE also maintains files related to the DMMO and maintains a DMMO web site containing information on the DMMO and on dredging-related issues. Finally, the USACE acts as the initial point of contact and main information clearinghouse for DMMO matters.

Contacting the DMMO

To contact the DMMO regarding application forms, meeting schedules and agendas, to request to address the DMMO at a meeting, or to get general information about the regulatory process for dredging projects or projects under consideration, contact the DMMO Coordinator at the USACE:

Mr. David Dwinell
U.S. Army Corps of Engineers, San Francisco District
333 Market Street
San Francisco, California 94105-2197
Telephone: (415) 977-8471
Fax: (415) 977-8483
e-mail: ddwinell@spd.usace.army.mil

The DMMO web site, maintained by the USACE, contains meeting schedules, agendas of upcoming meetings, the DMMO consolidated application form and instructions, guidance documents on sediment testing and preparation of reports, as well as links to documents dealing with dredged material management. The web site can be accessed at:

www.spn.usace.army.mil/conops/dmmo.htm

3.3.2 DMMO Operating Procedures

DMMO business is conducted at meetings held at the USACE offices in San Francisco. The meetings are usually held twice a month, although meetings may be cancelled or added, depending on the number of items requiring review. DMMO meetings are open to the public; applicants, their consultants, and interested parties may attend the meetings. Meeting agendas are posted at least one week before each meeting at the DMMO web site identified above. Items submitted for review at least one week before a scheduled meeting are added to the agenda for discussion, unless the agenda is already full, in which case they are scheduled for a subsequent meeting. Updates to the agenda may be made during the week before a meeting to accommodate late-arriving documents. The posted agenda on the DMMO web

site is updated to reflect any such changes. Interested parties may also contact the DMMO coordinator at any time to inquire about meeting agendas.

Table 3.2
Roles of DMMO Member Agencies in Reviewing Proposals for Dredged Material Disposal in Different Environments

Regulatory Authority of DMMO Agencies for Dredged Material Disposal Environments				
USACE	***USEPA***	***BCDC***	***SFBRWQCB***	***SLC***
In-Bay				
Department of the Army permit pursuant to CWA and Rivers and Harbors Act of 1899	CWA permit oversight	Permit, pursuant to McAteer-Petris Act (MPA) or Suisun Marsh Preservation Act (SMPA), or federal consistency determination (CD), pursuant to Coastal Zone Management Act (CZMA), for dredging and disposal	CWA Section 401 Water Quality Certification (WQC) or Waste Discharge Requirements (WDRs) pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands
Ocean				
Department of the Army permit pursuant to MPRSA for transport of dredged material	Site designation and MPRSA permit oversight; determination of material suitability for disposal	Permit, pursuant to MPA or SMPA, or CD, pursuant to CZMA, for dredging, advisory capacity for disposal	Advisory	Advisory
Wetland (existing) enhancement				
Department of Army permit pursuant to CWA	CWA permit oversight	Permit, pursuant to MPA or SMPA, or CD, pursuant to CZMA, for dredging, permit or CD for disposal if site within BCDC jurisdiction	CWA Section 401 WQC or WDRs pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands
Restoration of diked historic Baylands				
Department of the Army permit pursuant to Rivers and Harbors Act of 1899, and to CWA if disposal site in waters of the US	CWA permit oversight if disposal site in waters of the US	Permit, pursuant to MPA or SMPA, or CD, pursuant to CZMA, for dredging, permit or CD for disposal if site within BCDC jurisdiction	CWA Section 401 WQC or WDRs pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands
Upland disposal (other than diked historic Baylands, waters of the US)				
Advisory, Department of Army permit pursuant to CWA for return flows to waters of US	Advisory, CWA permit oversight	Permit or CD for dredging, permit or CD for disposal if site within BCDC jurisdiction	CWA Section 401 WQC or WDRs pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands
Landfill				
Advisory	Advisory	Permit or CD for dredging, permit or CD for disposal if site within BCDC jurisdiction	CWA Section 401 WQC or WDRs pursuant to Porter-Cologne Water Quality Control Act	Permit or lease if disposal on state lands

DMMO meetings provide a forum for the member agencies to jointly review project documentation and to ask clarifying questions of applicants, for applicants to get feedback from all agencies at once, and for interested parties to get information about projects under review.

When the member agencies come to consensus on a project recommendation, the meeting minutes reflect the recommendation, and the applicant is officially notified in writing within two weeks of the meeting, except in the case of USACE projects, for which letters are not issued. After DMMO review, applicants must obtain approvals from the individual member agencies.

3.3.3 DMMO Review of Projects Beyond the Jurisdiction of One or More DMMO Agencies

Not all dredging and disposal projects fall under the jurisdiction of each of the DMMO member agencies (Table 3.2). For example, the disposal portions of projects proposing to use the San Francisco Deep Ocean Disposal Site (SF-DODS) fall beyond the jurisdictions of BCDC, SLC, and the SFBRWQCB. Such projects are still reviewed by the DMMO, but only the agencies with regulatory authority participate in approving sediment sampling plans or making recommendations on sediment suitability. Agencies without regulatory authority will review project proposals but participate in an advisory capacity to those with regulatory jurisdiction.

3.4 PROJECT REVIEW AND AUTHORIZATION BY DMMO AGENCIES

Figure 3.1 shows the steps in the authorization process for dredging and dredged material disposal projects. Initially, projects are reviewed by the DMMO and later move through the permitting processes of the individual agencies. The process for obtaining approvals has three phases: suitability determination, permit process, and episode approval. These are described below. The DMMO serves as the single point of entry into the process, although eventually applicants and permittees must obtain separate approval from the appropriate DMMO member agencies.

3.4.1 Suitability Determination

The suitability determination process (Figure 3.1, top) occurs within the DMMO. During this process, the DMMO member agencies make a joint recommendation to the individual member agencies on whether the sediments to be dredged are appropriate, in terms of potential for environmental impacts, for the proposed disposal or reuse site. The recommendation is usually based on the results of sediment testing. The applicant must submit results from recent sediment testing or submit sufficient data (usually in the form of previous test results) to support a finding by the agencies that the sediments are suitable for the proposed disposal environment. Details on the testing requirements and criteria for suitability at different disposal environments are described in Chapter 4.

The applicant should submit to the DMMO either a sediment SAP, or a written request (with supporting information) requesting a "Tier I" exclusion from testing requirements based on factors such as previous testing history and physical characteristics of the material proposed for dredging.[3] The DMMO reviews SAPs to determine their consistency with state and federal guidance on testing protocols and to determine the ability of the proposed testing program to provide the agencies with sufficient information to make a determination of suitability of the material for disposal at a specific site. Upon review of a SAP, the DMMO may do the following:

Approve the SAP (the applicant may proceed with sediment testing).

- Approve the SAP with conditions. (The applicant may proceed with sediment testing but should adhere to the approval conditions.)

- Not approve the SAP. (If the DMMO member agencies do not approve a SAP, the applicant is provided with specific explanations and a recommended course of action, usually that the SAP be revised and resubmitted.)

Similarly, a request for a Tier I exclusion from testing may be approved, approved with conditions, or not approved. Approval conditions might include a requirement that sediments be tested for certain chemical constituents to confirm data presented in support of the request. A Tier I exclusion from testing constitutes a recommendation by the DMMO member agencies that the sediments are suitable for the proposed disposal environment, and that the applicant may proceed with the next phase (Permit Process, Figure 3.1, middle) of project authorization. If there is insufficient information to make a determination, the applicant may be advised to revise and resubmit the request, or the agencies may determine that a Tier I exclusion is not justified and request that a SAP for sediment testing be submitted for review.

Upon approval of a SAP, the applicant can proceed with testing the sediments proposed for dredging. Upon completion of testing, a report of testing results is submitted to the DMMO for review. Based on their review of the sediment testing report, DMMO members may recommend one of the following to their respective agencies:

The sediments are suitable for the proposed disposal environment, in which case the applicant may proceed to the next phase (permit process) of authorization.

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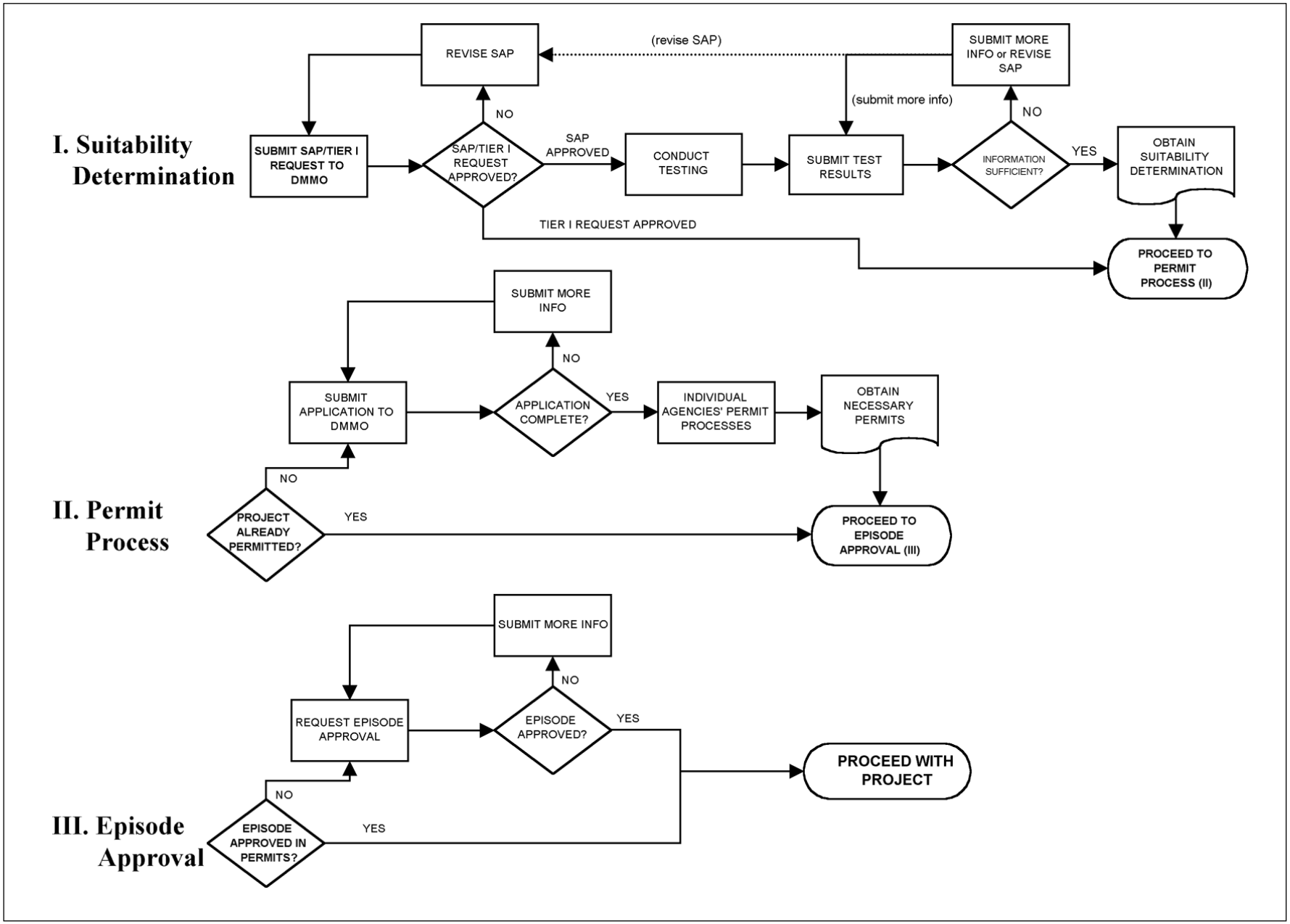
3 The term "Tier I" comes from joint USACE and USEPA guidance for testing of dredged material for disposal in aquatic environments. The term refers to different tiers of information needed for decision-making, based on the degree of potential environmental risk associated with a proposed project. For more information about the tiered testing approach for in-Bay and ocean disposal, see Chapter 4.

Figure 3.1

SOURCE: SFBRWQCB, 2000

Project Review and Authorization by DMMO Agencies



- Further information, such as additional testing of sediments, is required to make a recommendation. The applicant may provide the requested information for review by the agencies or may choose to alter the project in such a way that the agencies are able to make a determination without additional information.[4]

- Some or all of the sediments are not suitable for the proposed disposal environment. In this case, the applicant may elect not to undertake the project or to modify the project, such as by proposing another disposal location, and obtain a suitability determination for the modified project. Often the suitability determination process can proceed more quickly for a modified project because of the availability of information from the original project proposal.

3.4.2 Permit Process

The Permit Process section of Figure 3.1 (center) shows the steps by which project proponents obtain authorizations from DMMO member agencies for dredging and dredged material disposal projects. While the process begins within the DMMO, final authorization must be obtained from each member agency individually. Table 3.2 summarizes the DMMO member agencies' regulatory authority for different dredged material disposal environments. The processes of the individual agencies are described in Appendix C.

A consolidated permit application form for dredging and disposal projects has been developed that is accepted by all of the DMMO member agencies. Applicants submit a completed application form, as well as several other documents to the DMMO. The agency representatives to the DMMO review and discuss the applications as a group and may make recommendations to applicants about the proposed project. Since each agency has different laws and regulations governing the issuance of approvals, at this point the applicant must go through the process of obtaining authorization from each of the DMMO member agencies individually. However, the DMMO may continue to be used as a forum to discuss the project. The DMMO also serves as a point of contact for the applicants and interested parties throughout the project authorization process.

Because permits are issued by the individual DMMO agencies, any necessary enforcement activities are also carried out by the individual agencies, although the DMMO may serve as a forum for initial discussions of problems. Appendix D contains information on the enforcement authorities of the DMMO agencies.

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4 For example, if the sediment testing for a project proposing in-Bay disposal showed high concentrations of a potentially bioaccumulative substance, the agencies might request further information, such as testing the bioaccumulation potential of the sediments, before making a determination. The applicant, rather than perform the expensive bioaccumulation tests, could elect to change the proposed disposal location, such as to use as daily cover at a landfill. Existing information might be sufficient to make a suitability determination for the modified project.

3.4.3 Episode Approval

Some permits for maintenance dredging projects authorize multiple dredging and disposal episodes, over a period of several years. Such permits require that permittees obtain formal approval, after a recommendation of suitability by the DMMO, for each dredging episode under the permit (Figure 3.1, bottom). Episode approvals, when appropriate, are issued by the individual DMMO member agencies. Because episode approvals occur in conjunction with a suitability determination for the sediments proposed for dredging, the DMMO should serve as a point of entry into this process, as a forum for the agencies to discuss the project, and as a point of contact for applicants and interested parties.

3.5 PROJECT REVIEW BY OTHER AGENCIES

Dredging and dredged material disposal projects may be subject to the review and permitting authority of other federal, state, and local agencies. At the federal and state level, resource agencies (USFWS, NMFS, CDFG) may review and comment on projects. The Sacramento District of USACE and the Central Valley Regional Water Quality Control Board may have jurisdiction over projects involving reuse of dredged material in the Delta. The California Coastal Commission regulates the transport of dredged material to SF-DODS. Dredging and disposal projects may also require permits from local agencies such as county planning departments. Appendix E describes the roles of other agencies in the review and authorization of dredging and disposal projects.

3.6 REVIEW OF INDIVIDUAL PROJECTS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

CEQA requires California public agencies to consider the environmental impacts of projects they carry out and outlines specific procedures for considering those impacts.[5] Further guidance on CEQA implementation is found in the CEQA Guidelines.[6] The issuance of a permit is considered a "project" under CEQA; therefore, dredging and dredged material disposal projects that require permits from public agencies are subject to the CEQA process.

The CEQA process is undertaken by the "lead agency," which is the agency that has the principal responsibility for approving a proposed project. For dredging and disposal projects, the lead agency may be a local planning department or port, one of the LTMS state agencies, or another state agency.

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5 California Public Resources Code, Sections 21000-21178.1.

6 California Code of Regulations, Title 14, Sections 15000-15387.

NEPA requires that federal agencies consider environmental impacts of recommendations, reports on proposals for legislation, and other major federal actions.[7] Federal agencies are required (by regulations promulgated by the Council on Environmental Quality [CEQ]) to establish specific procedures for ensuring that their actions give appropriate consideration to the potential environmental effects of their decision-making.[8] The USACE has published regulations supplementing regulations promulgated by the CEQ.[9] For most dredging and disposal projects in the Bay area, the NEPA process is carried out by the USACE as part of the permitting process.

To encourage consistency in CEQA and NEPA review for dredging, disposal, and beneficial reuse projects, the LTMS agencies adopt the following implementation measure:

- The LTMS agencies will prepare a guidance document on potential environmental impacts of dredging, dredged material disposal, and beneficial reuse projects and on the relevant regulatory processes for such projects. This document will be used by LTMS agencies during CEQA and NEPA review, and will be distributed to other agencies that may serve as the lead agencies for such projects.

3.7 INVOLVEMENT OF AGENCIES AND INTERESTED PARTIES DURING PLANNING PHASES OF PROJECTS

Early involvement of agencies and interested parties during the planning phases of projects is important. It can streamline the authorization process by allowing issues to be raised and resolved before the authorization process begins. Early involvement can give the LTMS agencies the opportunity to make project proponents aware of goals and policies of the LTMS, and allow the agencies and interested parties to determine whether the project is consistent with those goals. Early involvement may also allow for coordination with other projects (Chapter 6, Section 6.6 on Regional Planning).

- The LTMS agencies will encourage project proponents to involve the agencies and interested parties early in the planning phases of projects by encouraging project proponents to form work groups, where appropriate, and by encouraging early coordination with the Dredged Material Management Office.

3.8 RESTRICTIONS ON PROJECTS TO PROTECT BIOLOGICAL RESOURCES

During preparation of the LTMS EIS/EIR, the LTMS agencies consulted with federal and state resource agencies regarding potential impacts of dredging and dredged material disposal to sensitive biological resources. The resource agencies, in conjunction with the LTMS

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7 42 United States Code 4331-4375.

8 40 CFR parts 1500-1508

9 For USACE Civil Works functions, including dredging, the NEPA guidance is contained in 33 CFR 230. For regulatory actions (permits), NEPA guidance is contained in 33 CFR 325, Appendix B.

agencies, developed a list of restrictions on dredging and dredged material disposal to protect special status and important commercial and recreational species and their critical habitat. These tables were then modified, and the modified tables included in the ROD for the final EIS. Figure 3.2 shows the restrictions on dredging projects. Figure 3.3 shows restrictions for disposal projects. Appendix F discusses these restrictions in more detail and describes the Section 7 consultation process.

- Dredging and dredged material disposal activities will be restricted as indicated in Figures 3.2 and 3.3 (and in Appendix F). Any projects proposing deviation from these restrictions will be approved by the permitting agencies only after completion of required consultation under Section 7 of the Endangered Species Act by the appropriate federal permitting agency. The permitting agencies will closely review disposal projects proposed for the designated in-Bay disposal sites to ensure that disposal during the specified time frames is avoided or minimized. The permitting agencies will require that the need for disposal at the in-Bay sites during the specified time frames is clearly established.

3.9 REQUIREMENTS FOR CONSIDERING ALTERNATIVE DREDGED MATERIAL DISPOSAL LOCATIONS

The Clean Water Act (CWA) and BCDC's Bay Plan do not authorize aquatic disposal of dredged material unless an analysis of potential alternative disposal sites is first performed. This section discusses the requirements of each.

3.9.1 Clean Water Act Alternatives Analysis and Definition of Practicability

Fundamental to the Clean Water Act 404(b)(1) Guidelines (Guidelines) is the precept that dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or cumulatively on the ecosystem(s) of concern. The Guidelines provide the substantive criteria used by the USEPA, USACE, and SFBRWQCB in evaluating proposed discharges to waters of the U.S.

According to the Guidelines, no discharge of dredged or fill material to waters of the U.S. may be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. Practicable alternatives that should be considered include, but are not limited to, activities that do not involve a discharge into waters of the U.S. or ocean waters, and discharges at other aquatic locations that would have less adverse impacts. An alternative is practicable if it is available and capable of being done, after taking into consideration cost, existing technology, and logistics.[10] An alternative is practicable only if

10 40 CFR 230.3(q)

Figure 3.2

SOURCE: Appendix J of LTMS ROD (Jul 99)

Dredging Restrictions by Area

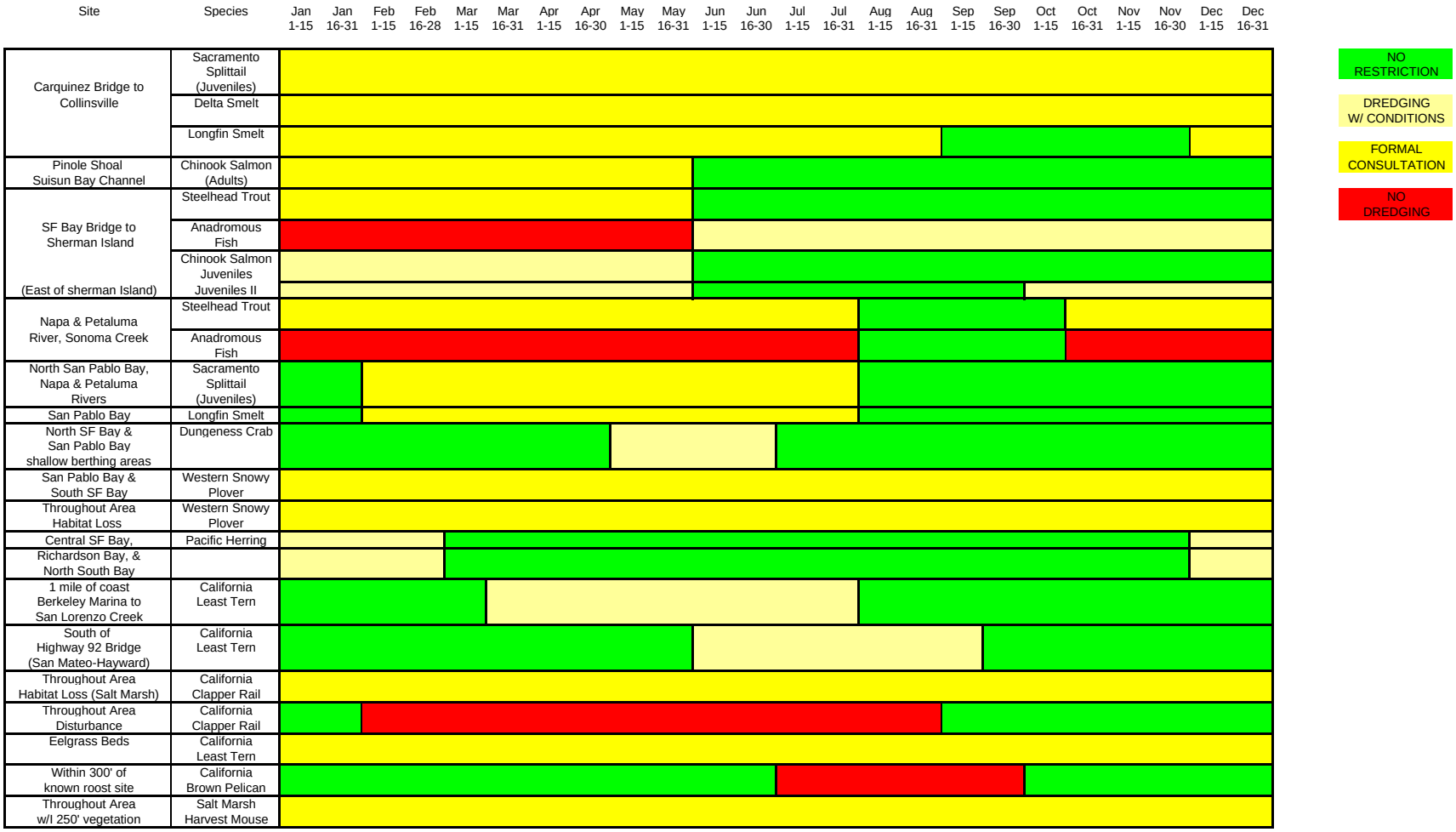

Figure 3.3

SOURCE: Appendix J of LTMS ROD (LTMS,1999)

Diposal Restrictions

Disposal Restrictions

Species	Site	Jan 1-31	Feb 1-28	Mar 1-31	Apr 1-30	May 1-31	Jun 1-30	Jul 1-31	Aug 1-31	Sep 1-30	Oct 1-31	Nov 1-30	Dec 1-31
Chinook Salmon (adults & juviniles)	SF-9 & SF-16	MINIMIZED DISPOSAL					NO RESTRICTION						
Steelhead Trout	SF-9, SF-10, & SF-11	MINIMIZED DISPOSAL										NO RESTRICTION	
Delta Smelt	UWR	FORMAL CONSULTATION											
Delta Smelt	Suisun Bay & marshes (not SF-16)	FORMAL CONSULTATION											
Delta Smelt	Coastal Waters,Sloughs, Salt Ponds, within 3 mi Nest area Alameda NAS	FORMAL CONSULTATION											
Recreational Marine Fishes	SF-10 & SF-11	NO RESTRICTION				MINIMIZED DISPOSAL						NO RESTRICTION	
California Brown Pelican	Within 300' of known roost site	NO RESTRICTION			NO DISPOSAL							NO RESTRICTION	
Anadromous Fish	SF-8,SF-9, SF-10, SF-11, & SF-16	MINIMIZED DISPOSAL					NO RESTRICTION						
California Clapper Rail	UWR	FORMAL CONSULTATION											
Snowy Plover	UWR	FORMAL CONSULTATION											
Salt Marsh Harvest Mouse	UWR	FORMAL CONSULTATION											

NO RESTRICTION
MINIMIZED DISPOSAL
FORMAL CONSULTATION
NO DISPOSAL

Source: Appendix J of LTMS ROD (LTMS,1999)

Summary of Disposal Restrictions

Species	Site	Jan 1-31	Feb 1-28	Mar 1-31	Apr 1-30	May 1-31	Jun 1-30	Jul 1-31	Aug 1-31	Sep 1-30	Oct 1-31	Nov 1-30	Dec 1-31
Bar Channel	SF-8, Bar Channel	MINIMIZED DISPOSAL					NO RESTRICTION						
Carquinez	SF-9, Carquinez	MINIMIZED DISPOSAL					NO RESTRICTION						
San Pablo	SF-10, San Pablo	MINIMIZED DISPOSAL										NO RESTRICTION	
Alcatraz	SF-11, Alcatraz	MINIMIZED DISPOSAL										NO RESTRICTION	
Suisun	SF-19, Suisun	FORMAL CONSULTATION											
UWR		FORMAL CONSULTATION											

it fulfills the applicant's project purpose (e.g., maintaining navigability of channels and other subtidal areas).

Questions that should be addressed by permit applicants in an analysis of alternatives to aquatic discharge of dredged material (alternatives analysis for in-Bay disposal)

In order for projects proposing the discharge of dredged material to waters of the U.S. to be approved under Section 404 of the Clean Water Act, it must be shown that there is no practicable alternative to the proposed discharge that would have less impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. Applicants for permits for such discharges must submit a written analysis of the alternatives to the proposed discharges. The DMMO has developed a list of questions to guide applicants in preparing the discussion.

- Do alternative disposal sites capable of accepting the proposed dredged material exist?
- What logistical and/or technological issues associated with alternative disposal options exist?
- What are the potential impacts associated with alternative disposal options (e.g., air, water quality, traffic, etc.)?
- Can alternative disposal for this project be made practicable by combining disposal with other projects?
- What is the cost of alternative disposal options?
- What is the cost of disposal site monitoring (taking into account other projects)?
- Do other aquatic sites exist that may be less environmentally damaging?
- If so, what logistical and technical issues exist? What are costs?
- Can the material be used as a resource (e.g., construction material)?
- If so, what costs would accrue to the project proponent?
- If so, what other environmental impacts (e.g., air quality) may result?

Practicability is determined on a case-by-case basis; no national or regional guidance exists for evaluating the practicability of any particular alternative. Nevertheless, certain general policies exist that regulatory decision-makers may use to help determine practicability. For example, an alternative that is not capable of fulfilling the applicant's project purpose is clearly not practicable. Alternatives that would require technological advances that are not currently available (e.g., shallow-draft ocean-going barges) are not considered practicable. Similarly, the absence of available alternatives to aquatic disposal (i.e., beneficial reuse sites) may render these alternatives impracticable. Logistics, such as the need to employ equipment that is unavailable may prove an alternative to be impracticable. Where the proposed project includes discharge to a special aquatic site,[11] and is not a water dependent use, practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise.[12] In addition, all practicable alternatives

11 Special aquatic sites are defined in the Guidelines at 40 CFR 230.3; the definition includes jurisdictional wetlands.

12 Disposal of dredged material is not considered a water dependent activity.

that do not involve discharge to a special aquatic site are presumed to have less adverse impact on the aquatic environment, unless clearly demonstrated otherwise.

Cost factors often play a large role in assessments of the practicability of alternatives to aquatic disposal of dredged material. The Guidelines are clear that cost must be considered in terms of the overall scope of the proposed project. Therefore, practicable alternative disposal options for a small marina will differ from those for the USACE maintenance dredging and for major port dredging projects. Similarly, the alternatives analysis prepared for a small marina will not require the same level of effort as would be required for a major port project. The Guidelines preamble also clarifies that the term "cost" does not necessarily account for the applicant's financial status, investment, or market share. The preamble to the Guidelines states that an alternative is not practicable if it is "unreasonably expensive" to the applicant. Unreasonably expensive is determined on a case-by-case basis.

3.9.2 BCDC Requirements Regarding Feasible Alternatives to In-Bay Disposal

BCDC's proposed Bay Plan amendment (Chapter 10 contains full language) states that disposal of dredged material in San Francisco Bay (the Bay) can be authorized if the applicant has demonstrated that "non-tidal and ocean disposal is infeasible because there are no alternative sites available or likely to be available in a reasonable period, or because the cost of disposal at alternate sites is prohibitive." Therefore, as part of any application for disposal of dredged material in the Bay, applicants must analyze the feasibility of alternate disposal locations. BCDC policies are stated broadly and do not have more detailed guidance similar to the 404(b)(1) Guidelines. However, BCDC will work with the other permitting agencies to coordinate implementation of their feasibility determination.

3.9.3 Determining Practicable Disposal Alternatives Prior to Determining Sediment Testing Framework

The dredging community has expressed concerns about the expense of sediment testing as alternatives to in-Bay disposal become more available. They have expressed particular concern that a project proponent could test sediments for in-Bay disposal but then be told by the agencies that an alternative disposal site was practicable, and be required to remobilize and test sediments again for a new disposal environment (Chapter 4 contains a discussion of sediment testing requirements). To address this concern, the LTMS agencies adopted the following implementation measure:

- To minimize the possibility of more than one sampling and testing event to test sediments for more than one disposal environment, the Dredged Material Management Office will encourage project proponents to submit an alternatives analysis pursuant to the Clean Water Act and a statement of consistency with BCDC's policies regarding fill in the Bay before proposing and implementing any sediment testing.

The LTMS agencies will strongly recommend this course of action for applicants proposing new work projects, maintenance projects involving over 10,000 cubic yards of dredging, and maintenance projects proposing a change from beneficial reuse or ocean disposal to in-Bay disposal.

If the sediments turn out to be unsuitable for in-Bay disposal, another placement alternative must be proposed, which could involve additional testing, regardless of the initial evaluation of practicability and feasibility.

3.10 STANDARD PERMIT CONDITIONS

Authorizations for dredging and dredged material disposal projects issued by the LTMS agencies include permit conditions, specific requirements about how the project is to be performed. Each LTMS agency has standard conditions that are included in most project authorizations. In some cases, these requirements are similar in each agency's authorization, but not identical. It can be difficult for the permittee to make sure they are complying with all conditions of all permits, and it can be difficult for the agencies to track compliance.

In keeping with the LTMS goal of establishing a cooperative permitting framework for dredging and dredged material disposal applications, the LTMS agencies have reviewed and compared standard permit conditions to see if some of them could be modified to make conditions identical in each agency's permits. In many cases permit conditions could be made identical with only minor changes. Appendix G contains a list of model permit conditions that will be included, as appropriate, in USACE, USEPA, BCDC, and SFBRWQCB authorizations for dredging and disposal projects.

- The LTMS agencies, in issuing permits for dredging and disposal projects, will coordinate permit conditions and may use permit condition language in Appendix G, where appropriate. Each agency may include other permit conditions, in addition to those listed.

3.11 CONSOLIDATED DREDGING/DISPOSAL PERMIT

A number of the interested parties requested that the LTMS agencies develop a single consolidated permit for dredging and disposal projects, as a step in fulfilling LTMS's fourth goal to "establish a cooperative permitting framework for dredging and dredged material disposal applications." DMMO has made substantial progress toward this goal by providing a single point of entry into the permitting process, developing a joint application form, and providing coordinated review of applications and supporting documents.

Through review of the existing laws and regulations, it appears that the only available method for a consolidated permit is issuance of a programmatic general permit (PGP). The USACE could, after opportunity for public comment, issue a PGP to one of the LTMS state agencies. That agency would then be responsible for administering the PGP for dredging and dredged material disposal in the geographic area specified by the PGP. The New England District of the USACE has issued a number of PGPs to states within its jurisdiction, which could serve as models for a San Francisco PGP.

However, several factors limit the usefulness of a PGP for the Bay Area:

- A PGP would not be applicable to SF-DODS. The Marine Protection Research and Sanctuaries Act (MPRSA) does not provide for USEPA to yield control of the program. Moreover, because SF-DODS is located beyond the boundary of the State of California, the LTMS state agencies do not have jurisdiction at the site.

- There are currently no PGPs pursuant to Section 404 of the Clean Water Act in California because at this time, no state agency has the statutory authority to administer a PGP. In addition, if there were statutory authority for a state agency to administer a PGP, the public might view a PGP as a way to reduce public participation in the regulatory process, as a means of circumventing review, or as facilitating—and encouraging—in-Bay disposal.

- While a PGP could eliminate the need for individual federal permits for in-Bay disposal projects, there is no mechanism for the state agencies to yield control of their regulatory programs to one another.

Based on a thorough consideration of the time and effort needed to develop a PGP, the lack of statutory authority for the state to assume a PGP, the expected controversy, and its limited usefulness, the LTMS agencies have decided not to pursue a consolidated permit at this time. The LTMS agencies have made progress toward this goal through modification of certain permit conditions (Section 3.10, above).